

Eldorado Development & Realty Corp. and RWS Development Corporation, Single Employers and/or alter egos and John Miller. Case 13-CA-21185

November 29, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On July 8, 1988, the National Labor Relations Board issued an Order in this proceeding,¹ adopting the administrative law judge's recommended Order that the Respondent, Eldorado Development & Realty Corp. (Eldorado), its officers, agents, successors, and assigns, pay discriminatees Edward Nylen, Paul Wilson, and John Miller the amounts with interest set forth in the settlement agreement executed by the parties on March 5, 1982.² On September 12, 1988, the United States Court of Appeals for the Seventh Circuit enforced the Board's Order in its entirety.³ On June 26, 1991,⁴ the Regional Director for Region 13 issued a compliance specification and notice of hearing, alleging that Respondent RWS Development Corporation (RWS) and Respondent Eldorado are a single employer and/or alter egos and, as such, RWS is obligated to remedy the unfair labor practices found by the Board and enforced by the Seventh Circuit. No answer was filed.

On August 2, the General Counsel filed a Motion to Transfer Proceedings to the Board and Motion for Summary Judgment. On August 7, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. Respondent RWS thereafter filed a response to the Notice to Show Cause.⁵

¹ Not reported in Board volumes.

² The settlement agreement provided, inter alia, that in the event of Eldorado's noncompliance, an order could be obtained from an administrative law judge directing compliance and providing remedies in accordance with the agreement's terms. The Respondent agreed in the settlement agreement that a Board order and a court of appeals judgment could be obtained ex parte.

Therefore, on June 30, 1988, Administrative Law Judge John M. Dyer found that Respondent Eldorado engaged in unfair labor practices by unlawfully terminating Nylen and Wilson and by discharging Miller. The judge ordered that Respondent Eldorado pay discriminatees Nylen, Wilson, and Miller \$1293, \$3300, and \$3300, respectively, less standard deductions plus 20-percent annual interest from May 1, 1982, in accordance with the settlement agreement.

³ No. 88-2732 (unpublished).

⁴ All dates are 1991 unless indicated otherwise.

⁵ As its response to the Notice to Show Cause, RWS timely filed a Motion for Summary Judgment. Attached to the motion was an answer to the compliance specification. The General Counsel filed an Opposition to Respondent's Motion for Summary Judgment and Motion to Reject Respondent's Answer.

Also included with the response to the Notice to Show Cause was a copy of a letter dated July 26, 1991, from RWS' attorney addressed to the chief administrative law judge. The letter refers to the

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record, the Board makes the following

Ruling on Motions for Summary Judgment

Section 102.56(b) and (c)⁶ of the National Labor Relations Board's Rules and Regulations states:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

filing of a Motion for Summary Judgment on that date. There are, however, no related documents attached to the letter, such as the Motion for Summary Judgment or proof of service. Further, there is no record of any such document having been received by the judge's division.

⁶ Formerly Sec. 102.54(b) and (c). The Board amended its Rules governing compliance proceedings effective November 13, 1988. The substance of former Sec. 102.54 has been incorporated into Sec. 102.56 as revised.

The compliance specification states that an answer must be filed with the Regional Director within 21 days from the date of the specification, and that if the answer fails to deny the specification's allegations in the manner required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, the allegations shall be deemed to be admitted to be true. Further, the undisputed allegations in the Motion for Summary Judgment disclose that on July 22, no answer having been received from the Respondents, the Regional Office notified the Respondents and Robert and Russell Strutz, officers and agents of the Respondents, that if an answer was not filed by July 29, a Motion for Summary Judgment would be filed. The Respondents did not file an answer to the compliance specification within the required time, and the General Counsel moved for summary judgment. In its order transferring the proceeding to the Board and Notice to Show Cause, issued August 7, the Board specified that the Respondents' written reply be filed with the Board in Washington, D.C., on or before August 21. Respondent RWS' reply, postmarked August 20,⁷ did not respond to any part of the compliance specification, but, instead, moves for dismissal of the compliance specification by raising two new issues.

First, RWS contends that the compliance specification constitutes a new action filed against RWS which is time-barred by the 6-month statute of limitations set forth in Section 10(b) of the Act. Second, RWS contends that the Board is precluded from pursuing this compliance proceeding against RWS because the Board failed to include RWS in an earlier collection action against Eldorado filed in the United States District Court for the Northern District of Illinois.

We disagree with both of the Respondents' contentions. It is well settled that Section 10(b) of the Act does not apply in compliance proceedings. See, e.g., *Sanford Home for Adults*, 280 NLRB 1287, 1289 (1986). Further, we note that a defense of laches will not lie against an agency of the United States Govern-

ment. *NLRB v. J. H. Rutter-Rex Mfg. Co.*, 396 U.S. 258 (1969). Finally, the earlier district court proceeding does not preclude the Board from seeking compliance against RWS at this stage because the issue of RWS' liability has never been litigated. Accordingly, we deny the Respondent's Motion for Summary Judgment.

Respondent RWS' reply to the Board's Notice to Show Cause does not specifically deny or respond in any way to the allegations of the compliance specification as required by Section 102.56(b) of the Board's Rules and Regulations. Moreover, neither Respondent has offered any explanation for the failure to file a timely answer to the compliance specification. Although Respondent RWS attached an answer to its response to the Notice to Show Cause, that answer, postmarked August 20, clearly does not constitute a timely answer inasmuch as the answer to the compliance specification was to have been filed no later than July 29. We find that the allegations of the compliance specification are therefore admitted as true.

In the absence of any explanations for the Respondents' failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

Accordingly, the Board concludes that the amounts due are as stated in the compliance specification, and orders the Respondents to pay those amounts to the discriminatees.

ORDER

The National Labor Relations Board orders that the Respondents, Eldorado Development & Realty Corp., Tinley Park, Illinois, and RWS Development Corporation, Mokena, Illinois, single employer and/or alter egos, their officers, agents, successors, and assigns, shall pay the employees named below the amounts set forth adjacent to their names, with 20-percent annual interest accrued from May 1, 1982, to the date of payment, minus tax withholding required by law.

Edward Nylen	\$1293
Paul Wilson	3300
John Miller	3300

⁷The reply was timely filed because it was postmarked one day before the due date. See Sec. 102.111(b) of the Board's Rules and Regulations.